

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 120 of 2003

Reserved on : 16.12.2019

Delivered on : 06.01.2020

Birolal @ Vijay Kumar, S/o Jageshwar Sahu, aged about 27 years, By Occupation Agriculturist, R/o Village- Navagaon Khurd, P.S.- Saja, Tahsil-Saja, District- Durg (C.G.)

---- Appellant

Versus

The State of Chhattisgarh

---- Respondent

For Appellant : Mr. Bharat Rajput, Advocate.

For State/respondent : Mr. Aman Kesharwani, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 27.11.2002 passed by Special Judge/ Additional Sessions Judge, Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, Durg (C.G.) in Special Case No. 67/2002, wherein the said court convicted the appellant for commission of offence under Section 376 (1) of IPC, 1860 and sentenced to undergo R.I. for 7 years and fine of Rs. 500/- with further default stipulations.
2. In the present case, prosecutrix is PW-1. As per version of the prosecution, on the date of incident i.e. on 21.02.2002, the prosecutrix was deputed by her sister to keep watching on agricultural crop at her field. At about 4:00 p.m., the appellant came to the prosecutrix, caught hold her and made her lie-down, removed her undergarment and thereafter, committed sexual intercourse with her forcefully. The

prosecutrix narrated the incident to her sister who in turn narrated the same to father of the prosecutrix and the same was reported to Police Station on 23.02.2002. The matter was investigated, the appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) The FIR was lodged after two days of incident and the delay is not explained, therefore, case of the prosecution is doubtful.

(ii) The prosecutrix (PW-1) deposed that on her cries one Ashok Kumar reached to the spot, but said Ashok Kumar did not depose anything before the trial court, therefore, version of the prosecutrix is doubtful.

(iii) The trial court has not evaluated the evidence in its true perspective, therefore, finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the records.

6. The prosecutrix (PW-1) deposed before the trial court that she was watching crop of her field at the same time, the appellant reached there, caught hold her hand and chest, made her lie-down, removed her cloth and undergarment and thereafter, committed sexual intercourse with her. When one Ashok Kumar reached there, the appellant flee away.

7. As per version of this witness, she narrated the story to her sister and brother-in-law (Jija) and thereafter, report was lodged. Version of this witness is supported by version of Kamla Bai (PW-2), Kunwar Singh (PW-3), Vasudev Ram (PW-4). Again, it is supported by Dr. Rachna Agrawal (PW-7) who examined the prosecutrix on 24.02.2002 at Community Health Centre, Saja and noticed one linear scratch mark on her right forearm which length, width & depth are 3.5 c.m., 0.5 m.m. & 2.0 m.m. respectively. As per version of this witness, the injuries were simple in nature and it is caused 3-4 days before. All these witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.
8. The statement of the prosecutrix is quite natural and inspiring confidence and when her evidence is inspiring confidence, no corroboration is required. There is no reason that the appellant has been roped in false charge on account of any grudge or otherwise. Version of this witness is supported by FIR (Ex. P/1) in which name of the appellant is mentioned as culprit and his act of rape is also mentioned in the said FIR.
9. It is true that there is two days delay in lodging the report, but the delay in lodging the report in the case of sexual assault cannot be equated with the case involving other offences. The family members after giving it serious thought decided to lodge the report. Where report of rape is to be lodged, many questions would obviously crop up for consideration before one finally decides to lodge the FIR. There are several factors which weigh in mind of the prosecutrix and her family members before coming to the Police Station to lodge a

complaint. In a tradition bound society prevalent in India, more particularly, in rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR. In view of the above, the argument advanced on behalf of the appellant is not sustainable.

10. The trial court elaborately discussed the entire evidence and after reassessing the same, this Court has no reason to say that the appellant has been falsely implicated. There is no reason to disbelieve the evidence of the prosecutrix. The act of the appellant falls within mischief of Section 376 (1) of IPC, 1860 for which the trial court convicted the appellant and the same is hereby affirmed.

Heard on the point of sentence.

11. The trial court awarded R.I. for 7 years for commission of offence under Section 376 (1) of IPC, which is minimum sentence and less than minimum cannot be awarded. The whole sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
12. The appellant is reported to be on bail, his bail bond is cancelled. The trial court will prepare super-session warrant and issue warrant of arrest against the appellant and after his arrest, he be sent back to the concerned jail for serving out the remaining part of the jail sentence. The trial court shall submit compliance report on or before 30th April, 2020.

Sd/-
(Ram Prasanna Sharma)
Judge